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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,457	05/15/2001	Daniel Joseph Wolff	550-232	8078

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NIXON & VANDERHYE P.C.
8th Floor
1100 North Glebe Road
Arlington, VA 22201-4714

EXAMINER	
LE, DEBBIE M	

ART UNIT	PAPER NUMBER
2177	5

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/854,457	WOLFF ET AL.	
	Examiner	Art Unit	
	DEBBIE M LE	2177	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 January 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Applicant's arguments filed on 1/2/04. Claims 1-27 are presented for examinations.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 19-22, 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by McClain et al (US Patent 6,049,874).

As per claims 1 and 19, McClain discloses a system and method for backing up and restoring computer files comprising:

file comparing logic operable to compare said stored computer file with an archive copy of said computer file stored when said stored computer file was created (fig. 1, col. 3, lines 15-62); and

alteration reversal logic operable if said file comparing logic detects that said stored computer file and said archive computer file do not match to replace said stored computer file with said archive copy of said computer file (fig. 4, col. 3, lines 63-67, col. 4, lines 1-4).

As per claims 2 and 20, McClain teaches wherein said archive copy of said computer file is stored in one of: an unencrypted form; an encrypted form; an encrypted media; an encrypted volume; and a PGP disk (col. 2, lines 27-54, col. 11, lines 44-67, col. 12).

As per claims 3 and 21, McClain teaches wherein said archive copy of said computer file is stored in one of a different physical storage device to said stored computer file (fig. 1, # 12, # 18, col. 6, lines 16-24); and a different part of a common physical storage device shared with stored computer file (fig. 1, # 20, col. 6, lines 26-38).

As per claims 4 and 22, McClain teaches wherein a subset of file types stored by said computer are subject comparison by said file comparing logic and to creation of an archive copy for use with said file comparing logic (fig. 2, col. 7, lines 10-23).

As per claims 6 and 24 McClain teaches archive file copy logic operable upon creation of said stored computer file to also created said archive copy of said computer file (col. 2, lines 31-35, 55-57)

As per claims 7 and 25, McClain teaches wherein said archive file copy logic operates to create said archive copy of said computer file for a subset of file types stored by said computer (col. 3, lines 63-67, col. 4, lines 11-31).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 5, 8, 14, 17, 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClain et al (US Patent 6,049,874) in view of Midgley et al (US Patent 6,526,418 B1).

As per claims 5, 8, 14, 17, 23 and 26, McClain does not explicitly teach wherein said subset of file types include one or more of executable file types; and dynamic link library file types. However, Midgley teaches a subset of file types include one or more of executable file types; and dynamic link library file types (col. 8, lines 24-38). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because those are user specified files and system files and they are usually changed by the users/or

administrators. As the results, they are needed to be backup as well in order to restore as needed.

Claims 9-13, 15-16, 18 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClain et al (US Patent 6,049,874) in view of Chess (US Patent 5,572,590).

As per claims 9, 18 and 27, McClain does not explicitly teach wherein said alteration is a malicious alteration. However, Chess teaches a alteration is a malicious alteration (col. 2, lines 8-22). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because it indicates the change to the computer files is malicious or legitimate so the files can be effectively and efficiently repaired.

Claim 10 is rejected by the same rationale as state in independent claim 1 argument. Furthermore, McClain does not explicitly teach a method of detecting a malicious alteration to a stored computer file. However, Chess teaches a alteration is a malicious alteration (col. 2, lines 8-22). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because it indicates the change to the computer files is malicious or legitimate so the files can be effectively and efficiently repaired.

Claims 11-13, 15-16 have similar limitations as claims 2-7; therefore, they are rejected under the same subject matter.

Response to Arguments

Applicant's arguments filed 1/2/04 have been fully considered but they are not persuasive.

Applicant argued that McClain et al. (US Patent 6,049,874) does not teach reverses an alteration to a stored computer file or detects a malicious alteration to a stored computer file by comparing that computer file with an archived copy made when that file was created, where the alteration is reversed by replacing the stored filed with the archive copy.

In response, the examiner respectfully disagrees. McClain does teach at column 1, lines 39-42 that "Should a file or entire hard disk drives in the system be **damaged**, lost, or **otherwise rendered inaccessible**, the back up copy of the file that is stored on, e.g., the storage tape can be copied back into the system". It is clear that "a file or entire hard disk" is equivalent to *stored computer file;* "be damaged, rendered inaccessible" is equivalent to *detects a malicious alteration*; "back up copy of the file that is stored on, e.g., the storage tape" is equivalent to *archive copy*; "be copied back into the system" is equivalent to *replacing the stored filed with the archive copy.* From the above passages, McCLain does anticipated teach the claimed language "alteration reversal logic operable if said file comparing logic detects that said stored computer file and said archive computer file do not match to replace said stored computer file with said archive copy of said computer file".

In addition, it is noted that any system to restore original data has corrupt whether the corrupted file or data is an accidence or malicious. Therefore, an alteration is a malicious alteration as in claim 9 is not given a patentable weight.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBBIE M LE whose telephone number is 703-308-6409. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN BREENE can be reached on 703-305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DEBBIE M LE
Examiner
Art Unit 2177

Debbie Le

March 11, 2004.

GRETA ROBINSON
PRIMARY EXAMINER